

FILED

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

WAKE COUNTY

2014 AUG -5 FILE NO: 14 CVS

THE NORTH CAROLINA STATE BAR WAKE COUNTY, C.S.C.

Petitioner

BY

CONSENT ORDER OF
PRELIMINARY INJUNCTION

v.

JONATHAN S. McELROY, Attorney,

Respondent

THIS MATTER came on for consideration by the undersigned Judge of the Superior Court of Wake County on motion of Petitioner, the North Carolina State Bar. Petitioner was represented by Jennifer A. Porter. Respondent, Jonathan S. McElroy, appeared *pro se*. Based upon the consent of the parties, the Court makes the following:

FINDINGS OF FACT

1. Petitioner, the North Carolina State Bar ("State Bar"), is a state agency duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar (Chapter 1 of Title 27 of the North Carolina Administrative Code). The State Bar brings this action pursuant to N.C. Gen. Stat. § 84-28(f).
2. Respondent, Jonathan S. McElroy ("McElroy"), was licensed to practice law in North Carolina in 1999.
3. The State Bar's membership database shows the following address for McElroy: 370 North Louisiana Avenue, Suite C-1, Asheville, NC 28806.
4. The State Bar has received information indicating McElroy mishandled fiduciary funds.
5. McElroy desires to cooperate with the North Carolina State Bar.
6. A need for prompt action exists to ensure that further entrusted funds are not mishandled in the future.
7. McElroy stipulates to the Wake County Superior Court's jurisdiction over his person, acknowledges the Court's subject matter jurisdiction pursuant to N.C. Gen. Stat. § 84-28(f), and waives any right to challenge or appeal this order on jurisdictional grounds.

BASED UPON THE FOREGOING FINDINGS, and with the consent of the parties, the Court makes the following:

CONCLUSIONS OF LAW

1. This Court has personal jurisdiction over Respondent and jurisdiction over the subject matter. This matter is properly before the Wake County Superior Court pursuant to N.C. Gen. Stat. § 84-28(f).

2. Prompt action, pursuant to N.C. Gen. Stat. 84-28(f), is necessary to preserve the status quo while the State Bar conducts an analysis of the trust and fiduciary accounts to which McElroy has had access as well as any other accounts into which client or fiduciary funds have been deposited, including, if applicable, operating and personal bank accounts, and to ensure that no further client or fiduciary funds are mishandled.

3. McElroy should be enjoined from accepting any further funds from or on behalf of clients or other individuals in a fiduciary capacity, from writing checks against or withdrawing funds from any account in which client or fiduciary funds have been deposited, and from directing any employee or agent to write a check against or withdraw funds from any account in which client or fiduciary funds have been deposited, until and unless expressly permitted by subsequent orders of the Court.

4. To assist the State Bar's analysis of his accounts, McElroy should provide the State Bar with records of all accounts in which client or fiduciary funds have been deposited and with all client files requested by the State Bar as set forth below.

5. To assist the State Bar's analysis of his accounts, McElroy should provide the State Bar with the reconciliation reports required to be prepared and maintained pursuant to Rule 1.15-3(d) of the Rules of Professional Conduct.

6. McElroy should be prohibited from serving as a trustee, escrow agent, settlement agent, attorney-in-fact, executor, personal representative or in any other fiduciary capacity.

THEREFORE, IT IS HEREBY ORDERED:

1. Jonathan S. McElroy is enjoined from accepting any further funds from clients or third parties in a fiduciary capacity, from withdrawing any funds from and/or writing any checks against any account in which client or fiduciary funds have been deposited, and from directing any employee or agent to withdraw funds from and/or write a check against any account in which client or fiduciary funds have been deposited until permitted by subsequent orders of the Court.

2. McElroy, or any other person having custody or control of records relating to any account into which client or fiduciary funds have been deposited, shall immediately produce to the North Carolina State Bar at its Raleigh, North Carolina

location for inspection and copying all financial records relating to any account into which client or fiduciary funds have been deposited, such accounts to include McElroy's personal accounts, and such records to include bank statements, canceled checks, deposit slips, client ledger cards, check stubs, deposited items and debit memos, wire documentation, and any other records relating to the receipt and disbursement of client and/or fiduciary funds, as requested by the State Bar.

3. McElroy, or any other person having custody or control over records relating to individuals for whom McElroy has provided legal or fiduciary services, shall produce to the North Carolina State Bar at its Raleigh, North Carolina location for inspection and copying all records and documents including but not limited to, client files, billing statements, memoranda and receipts. Current client files shall be produced within 24 hours of demand by the State Bar and closed client files shall be produced within 3 days of demand by the State Bar.

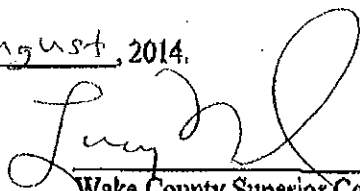
4. If McElroy does not have possession of the records described above or of the minimum records required to be maintained regarding trust and fiduciary funds pursuant to Rule 1.15-3 of the Rules of Professional Conduct, he shall direct the bank(s) where his trust and personal bank account(s) are maintained, within 10 days of the date of this order, to copy and transmit any such missing records directly to the North Carolina State Bar at its Raleigh, North Carolina location, at McElroy's expense.

5. McElroy shall immediately produce to the North Carolina State Bar at its Raleigh, North Carolina location the monthly and quarterly reconciliation reports for any and all trust or fiduciary accounts that he is required to produce and maintain pursuant to Rule 1.15-3(d) of the Rules of Professional Conduct. If McElroy has not prepared such reports as required, McElroy is hereby ordered to conduct the monthly and quarterly reconciliations required by Rule 1.15-3(d) of the Rules of Professional Conduct for the time period required under the Rules of Professional Conduct, or a lesser period if so specified by the State Bar, and produce the reports to the State Bar within two weeks of the date of this order or by the deadline set by the State Bar, whichever is later.

6. McElroy is hereby enjoined from serving as an attorney-in-fact, escrow agent, settlement agent, trustee, executor, personal representative or in any other fiduciary capacity.

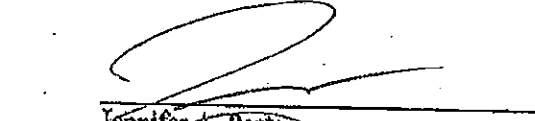
7. This Consent Order of Preliminary Injunction shall remain in effect until further order of this Court.

THIS the 5th day of August, 2014.

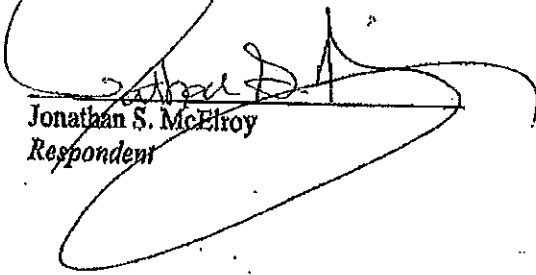


Wake County Superior Court Judge
Presiding

WE CONSENT:



Jennifer A. Porter
Attorney for Petitioner



Jonathan S. McElroy
Respondent

14CV010427

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THE NORTH CAROLINA STATE BAR,

WAKE COUNTY, C.S.C.
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CERTIFICATE OF SERVICE

v. BY

JONATHAN S. MCELROY, Attorney,

Respondent

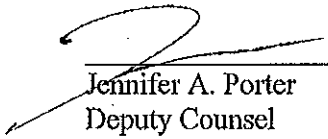
CERTIFICATE OF SERVICE

This is to certify that the Consent Order of Preliminary Injunction filed on August 5, 2014 was served on Respondent by depositing it in the United States Mail, postage prepaid, addressed to Respondent as follows:

Jonathan S. McElroy
370 North Louisiana Avenue
Suite C-1
Asheville, NC 28806

This the 5th day of August 2014,

Respectfully submitted,


Jennifer A. Porter
Deputy Counsel
The North Carolina State Bar
P.O. Box 25908
Raleigh, NC 27611
Attorney for Petitioner